



Ethics & Anti-Corruption Commission v Bokoo & 7 others (Environment & Land Case 40 of 2020) [2024] KEELC 7101 (KLR) (30 October 2024) (Judgment)

Neutral citation: [2024] KEELC 7101 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 40 OF 2020**

M SILA, J

OCTOBER 30, 2024

BETWEEN

ETHICS & ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

SOPHIA MORAA BOKOO 1ST DEFENDANT

JACKLINE NYAKERARIO ONGORO 2ND DEFENDANT

PHILUS NYAMOITA MOGERE 3RD DEFENDANT

JOB GEKONE ONGUBO 4TH DEFENDANT

JAMES NYABERI ONSONGO 5TH DEFENDANT

CALLEN KEMUNTO MAKORI 6TH DEFENDANT

HEZEKIAH MACHORA OIRA MOGARE 7TH DEFENDANT

KISII DISTRICT LAND REGISTRAR 8TH DEFENDANT

JUDGMENT

1. The plaintiff is a body established under the *Ethics and Anti-Corruption Commission Act*, No. 22 of 2011 (EACC Act). Part of its mandate is to recover public property belonging to the Government of Kenya pursuant to the provisions of Section 11 (1) (j) of the *EACC Act*. Through a plaint filed on 30 November 2020, the plaintiff contends that the land parcels Kisii Municipality/Block II/168, 170, 171, 173, 174, 175, and 176 (the suit properties) are reserved for public use and were hived off Government Houses Nos. Kisii HOU HG1, 2, 34 and Kisii Project/MOW2/2, constructed between the years 1930 and 1984. It is pleaded that the suit properties are located in Zone 01 alienated for residential housing and the houses in this zone accommodates senior civil servants. It is contended that on 18 August 2011, the 7th defendant, the Land Registrar, Kisii, illegally caused Green Cards to be opened in the Kisii



District Land Registry for the suit properties, with the Government of Kenya as ostensible Lessor, and purported to issue a leasehold interest to the 1st – 6th defendants. It is the assertion of the plaintiff that the suit properties are part of Milimani Government Quarters.

2. It is particularized that the parcel No. 168 was hived from the compound of Government House No. Kisii HOU HG 34; parcel No. 170 hived out of the compound of Government House No. Kisii/HOU HG2; parcel No. 173 hived out of the compound for Government House Kisii/HOU HG1 and HG 2 forming the County Commissioner's residence; parcel No. 174 hived out of the compound of Government House Kisii Project/MOW 2/2 (servants' quarters) ; parcel No. 175 hived out of the compound of the Government Houses Kisii/HOU 1 and HG 2 forming the County Commissioner's residence; and parcel No. 176 hived out of the compound of Government House Kisii/HOU HG 1 and HG 2 forming the County Commissioner's residence. In this suit the plaintiff more or less seeks for the cancellation of the titles of the 1st – 6th defendants and restoration of the properties to the Government of Kenya; and a permanent injunction to restrain the defendants from dealing with the suit properties otherwise than a transfer or surrender to the Government of Kenya.
3. The defendants were served but only the Attorney General, the 8th defendant, entered appearance. In support of her case, the plaintiff called a total of eight witnesses and availed various documents.
4. PW -1 was Arthur Mbatia, a Principal Physical Planner, working with the Ministry of Lands, Public Works, Housing and Urban Development. He outlined the process of allocation of Government land and Trust Land prior to the 2010 constitutional regime. For Government land, one would make an application to the Commissioner of Lands. The Commissioner would then require the Director of Physical Planning to prepare a Part Development Plan (PDP) which would be circulated for approval. He testified that for the suit properties no PDPs were approved. He elaborated that all approved PDPs are recorded in the register of Approved PDPs and must be allocated an Approved Development Plan Number.
5. PW- 2 was Patrick Bitengo Achoki, the Director, Physical Planning in the employment of the County Government of Kisii. His evidence was that Kisii has one Development Plan and the suit properties are located in an area planned and designated for Government houses. He has no record of any replanning, and added that no PDPs were prepared in favour of private allocation for the suit properties. In his opinion the suit properties remain Government houses.
6. PW -3 was Andrew Cheruiyot Rotich. He was previously the County Coordinator, National Land Commission, Kisii. He testified that his office received a complaint from the County Commissioner, Kisii, that there has been encroachment into land hosting several Government quarters, and he was requested to investigate. He established that there were 13 plots overlapping land hosting Government houses including the suit properties.
7. PW-4 was Cope Maranga Fredrick. He was the Director Land Administration, Kisii County from 2018 to 2022. He is now retired. His evidence was that his former office does not have records of existence of the suit properties. He did not find any minutes of allocation regarding the suit properties.
8. PW – 5 was Caroline Janet Gitebi. She is the Acting County Director of Housing in Kisii County. Her evidence was that the suit properties lie within Government housing ground. She relied on a witness statement which inter alia pointed out that the land parcel No. 168 was hived off the compound of Government House No. HG 34; parcel No. 170 was created out of the compound of Government House No. HG2; parcel No. 171 also from the compound of House HG2 and has taken the servant quarters; parcels No. 173, 175 and 176 are from Government House Nos. HG 1 and HG2, partly forming the County Commissioner's residence; and parcel No. 174 is from the compound of Government House No. Kisii Project/MOW2/2 (servant quarters). She stated that these houses sit on



- unsurveyed land and the Department of Housing has no record of allocation, survey, and subsequent issuance of titles to private entities. She stated that the houses in question are in the Building Register of Government Houses.
9. PW – 6 was Julius Waweru Mwangi, former Deputy Director, Estate Management, in the State Department of Housing and Urban Development. He retired in June 2022. He relied on a witness statement wherein he stated that in 2004 and 2007, the Government proposed to sell non-strategic Government houses to civil servants. In the Circular dated 24 January 2007, the houses listed for sale in Kisii did not include HG1, HG2, 3, HG 5, HG 7, HG25, and HG 34. Nevertheless the intended sale was later cancelled via circular dated 28 July 2008 published in the print media on 30 July 2008. He stated that the allocation of the suit properties did not follow the procedure laid down under Cap 19 of the Government Financial Regulations and Circular No. 2/58 and neither was the Ministry involved. He elaborated that the regulations require a board of survey initiated by the officer in charge of buildings to be constituted before the disposal of any Government House or Building, and none was initiated herein. He stated that the suit properties had already been alienated to the Department of Housing and developed hence not available for further alienation. He added that approval from the National Treasury as custodian of Government assets was required but none given. He stated that the land was illegally/irregularly allocated without following the due process. He added that majority of the Government houses are still occupied by civil servants who pay rent to the Government.
 10. PW – 7 was Pius Nyange Maithya a valuer working with the plaintiff. He carried out a valuation of the suit properties. He testified that the parcel No. 168 is part of the compound of Government House HG34. He continued that parcels No. 170 and 176 are also hived out of the Houses HG1 and HG2. Parcel No. 174 has a servant quarter meant for the Government House Kisii Project/MOW/2.
 11. PW – 8 was Margaret Wambeti Ngari Matheka. She is an investigations Officer with the plaintiff. She testified that she was assigned to investigate irregular and illegal allocation of public land in Kisii Milimani area Block II. She was investigating 17 parcels of land including the suit properties. She recorded statements from various offices and also obtained documents. In respect of the suit properties, her findings were that they are located where there is Government residential houses and the land was not available for alienation.
 12. With the above evidence the plaintiff closed her case.
 13. I invited counsel to file submissions which was done and I have taken the same into account before arriving at my decision.
 14. I will be brief in my disposition since the suit is not opposed. In a nutshell the plaintiff contends that the suit properties are alienated Government land set aside for housing civil servants and that there are Government houses in them. The plaintiff urges that the houses were never alienated to the defendants; that no PDPs were prepared for them; and that any titles they hold are not genuine titles. The pleadings and evidence of the plaintiff are not controverted by the defendants. I have no reason to doubt the same. Indeed, the evidence is compelling that the suit properties fall on existing Government housing quarters wherein civil servants live. There is no evidence that the existing plan setting aside the properties for Government housing was ever changed. There is no evidence of any allocation of the suit properties; no evidence of any PDP having been prepared for the same; and no evidence of Leases having been prepared. I find no basis upon which the suit properties were alienated to the 1st – 6th defendants and titles issued to them.
 15. In as much as the *constitution* and statute protect property and the right to own property, Article 40 (6) of the *constitution* is clear that there is no protection to property that has been found to have been unlawfully acquired. Section 26 of the *Land Registration Act*, Act No. 3 of 2012, which provides



statutory protection to title also elaborates instances where title can be impeached. That law is drawn as follows :-

26. Certificate of title to be held as conclusive evidence of proprietorship

- (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
 - (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.

16. From the above, a title obtained through fraud or misrepresentation, for which the proprietor is proved to be a party is liable to cancellation. So too a certificate of title obtained illegally, unprocedurally, or through a corrupt scheme.

17. It is clear to me that the titles to the suit properties could not have been obtained without an element of fraud or misrepresentation to which the 1st – 6th defendants were parties. Whatever the case, the titles were certainly not obtained legally or procedurally. They are therefore titles that are liable to be cancelled.

18. Given the foregoing, I uphold the case of the plaintiff. I proceed to order the nullification of the titles of the 1st – 6th defendants to the suit properties. I order the Land Registrar to make entry in the registers thereof that the said titles are declared null and void and have been cancelled by an order of court in the proceedings herein. No disposition should be registered in the titles thereto. I also issue an order of permanent injunction restraining the 1st – 6th defendants from entering, being upon, utilizing, or in any other way interfere with the land where the suit properties are purported to be located.

19. The plaintiff will have the costs of this suit as against the 1st – 7th defendants.

20. Judgment accordingly.

DATED AND DELIVERED THIS 30TH DAY OF OCTOBER 2024

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :-

Mr. Kyeli for the plaintiff

Court Assistant – David Ochieng’

